MISSOURI DEPARTMENT OF ELEMENTARY & SECONDARY EDUCATION
THREE-MEMBER HEARING PANEL (§ 162.961 RSMo 2001)

, a minor student, by his parents,
and

Petitioners,

Vs.

"Due Process" Hearing Request
of March 1, 2002

SPECIAL SCHOOL DISTRICT OF
ST. LOUIS COUNTY, and KIRKWOOD
SCHOOL DISTRICT,

Respondents.

D E C I S I O N

October 30, 2003

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I. Procedural History

Original Due Process Request

Petitioners filed their original request for a "due process" hearing on March 1, 2002. In their original request, Petitioners alleged: "Failure to provide a free and appropriate public education (FAPE) in the least restrictive environment. The same requires in this matter, a private placement in an out-of-state educational – residential – therapeutic program." In this original request, Petitioners proposed the following resolution: "A private placement in an appropriate out of state educational – residential – therapeutic program. The same is not available in Missouri."

Scheduling Orders on the Original Due Process Request

As the Missouri Department of Elementary and Secondary Education [DESE] received Petitioners' due process request on March 1, 2002, the original due date for the panel's decision was April 15, 2002. The parties were advised of same, and both thereafter jointly requested an extension of all timelines. Accordingly, **(1)** on April 2, 2002, a preliminary scheduling order was entered, upon request and agreement by both parties, setting the commencement date of the hearing for September 30, 2002, with five days allocated for the hearing; and with the decision to be rendered on or before December 16, 2002. Subsequently, after a request by both parties to extend all timelines, a **(2)** first amended preliminary scheduling order was entered on September 25, 2002, continuing the hearing to commence on November 6, 2002 and to continue through November 7 and 8, 2002; with the decision to be due on or before December 9, 2002. Thereafter, upon a request by both parties to extend all timelines, a **(3)** second amended preliminary scheduling order was entered on October 3, 2002, extending the hearing date to commence on December 2, 2002 and continue through December 3, 4, 5, and 6, 2002; with a decision by the panel due on or before January 6, 2003. On November 19, 2002, the parties requested a telephone conference with the panel chair to address scheduling concerns. During this conference, Respondent requested an extension of the timelines to afford it additional time to consult with the school superintendent regarding various aspects concerning services, placement and other matters involving the child. Petitioners were generally opposed to an extension at that time. Petitioners informed the chair that the child was then attending a private school in a placement that would not be changed regardless of the status of the hearing request, and that their claim for private school reimbursement would remain viable regardless of Respondent's extension request. Thus, **(4)** on November 20, 2002, a third amended preliminary scheduling order was entered, upon the request of Respondent to extend all timelines, setting the dates for the hearing for February 18, 19, 20, 21, 24 and 25; with the decision due on or before April 15, 2003.

Amended Due Process Complaint and Scheduling Orders Thereon

On February 4, 2003, two weeks prior to the scheduled commencement of the due process hearing, Petitioners filed an amended due process hearing request, alleging the following:

> Failure to provide a free appropriate public education (FAPE) in the least restrictive environment – requiring placement at The Churchill School and

> Metropolitan School. Efforts to re-enroll in Kirkwood School District and Special School District lead to unsatisfactory placement (Project Achieve & Epworth Day Program) once again a failure to provide FAPE. Student placed at The Pathway School, subsequent F.L. Chamberlain.
>
> Plaintiff requests tuition reimbursement for The Churchill School and Metropolitan and transportation to and from said schools and tuition reimbursement for The Pathway School (Norristown, PA) and F.L. Chamberlain Center Inc. (Middleboro, MA) and transportation costs to and from said schools.

Petitioners also designated a replacement for their panel member nominee, naming Richard Goldbaum, Ph.D., who was thereafter assigned to the panel by DESE on February 5, 2003. After Petitioners amended their due process request, Respondent requested an extension of all timelines based on the amended request. Petitioners offered general opposition to Respondent's request for an extension, but confirmed that they wanted to proceed to hearing on their amended request. Respondent suggested a new hearing commencement date of May 19, 2003; Petitioners objected to this proposed date, and requested an earlier date. Thus, on **(5)** February 10, 2003, a fourth amended preliminary scheduling order was entered, setting hearing dates for March 17, 18 and 19; and April 14, 15, and 16. These dates were agreeable to both parties. A decision was to be rendered by the panel on or before June 17, 2003. Subsequently, upon request of both parties to extend all timelines to adjust the hearing schedule, on **(6)** March 11, 2003, a final scheduling order was entered, based on (a) the request and consent of both parties to the revised schedule; and (b) the consent of both parties to waive the five-day disclosure requirement. Pursuant to the final schedule, hearing was to commence at 8:30 a.m. on March 17, 2003, and to continue on March 19 and 20; and on April 14, 15, and 16. A decision was to be rendered by the panel on or before June 17, 2003.

The Hearing and Related Scheduling Orders

Hearing commenced on March 17, 2003, and continued on March 19 and 20, 2003. At the end of the day on March 20, 2003, Petitioners requested an extension of all timelines and an adjustment of the schedule for the hearing to recommence on April 15, 2003, instead of April 14; and to continue on April 16, 17 and 18. Respondents consented to this request and the panel ordered the adjustment. No other changes to the March 11, 2003 final scheduling order were made at that time, and the decision deadline date remained on or before June 17, 2003. On April 14, 2003, Respondent requested a continuance of the hearing date, schedule to recommence on April 15, due to a death in counsel's family. Petitioners consented. Thus, **(7)** on April 14, 2003, an interim order rescheduling continued hearing was entered, designating the remaining hearing days upon dates agreeable to both parties: May 7, 8 and 9, 2003; with a decision to be rendered by the panel within 90 days of the conclusion of the hearing. Thereafter, Respondent requested another short extension of the hearing date schedule to accommodate other matters counsel had calendared. Petitioners objected, noting that they had made plans based on the April 14, 2003 interim order. **(8)** On April 30, 2003, an order confirming hearing was entered, confirming the April 14, 2003 interim order and confirming the recommencement of the hearing at 9 a.m. on Wednesday, May 7, 2003, with three days allocated for the hearing, through May 9, 2003. This order confirmed that the panel would render a decision within 90 days of the conclusion of the hearing. Accordingly, the

hearing recommenced on May 7, 2003, and continued through May 9, 2003, when the cause was submitted to the panel. At the conclusion of the hearing **(9)** on May 9, 2003, both parties requested an extension of all timelines, and both parties consented to a revised scheduling order, that each party's proposed findings of fact, conclusions of law and decision shall be filed on or before June 18, 2003; that any reply a party wishes to file shall be submitted on or before June 30, 2003; and that the panel's decision shall thereafter be rendered on or before August 25, 2003.

Post Hearing Scheduling Orders

On June 12, 2003, Petitioners requested a nine-day extension for the filing of their proposed findings of fact, conclusions of law, and decision [hereafter termed "proposals"], as well as a reply to a motion to dismiss that Respondent had filed. Respondent did not object to this request. Thus, **(10)** on June 12, 2003, a revised post-hearing scheduling order was entered by agreement of the parties, directing that each party may file their proposals (and additionally that Petitioners may file a reply to Respondent's motion to dismiss) on or before June 27, 2003 (a date agreed to by both parties). Any responses by each party were to be filed on or before July 9, 2003. The panel's decision deadline date remained at August 25, 2003. On June 26, 2003, Respondent requested an extension of the timelines to allow the parties' proposals to be filed on or before June 30, 2003. Petitioners consented provided they be allowed to file their reply to Respondent's motion to dismiss on or before that same date. Thus, **(11)** on June 27, 2003, a first amended revised post-hearing scheduling order was entered, directing that the parties may file their proposals on or before June 30, 2003, that Petitioners may file a reply to Respondent's motion to dismiss on or before that date, and that each party may file a reply to the other's proposals on or before July 9, 2003. The panel's decision deadline date remained at August 25, 2003. On July 1, 2003, Respondent requested, and Petitioners consented, to an extension of all timelines for both the filing of each parties' replies to their previously filed proposals, as well as the deadline date for the panel's decision. Thus, **(12)** on July 9, 2003, a second amended post-hearing scheduling order was entered extending all timelines, upon request of Respondent and by consent of Petitioners, with the replies to the proposals to be filed on or before July 11, 2003; and with the panel's decision to be rendered on or before September 8, 2003. On July 11, 2003, the parties jointly requested an extension for filing their replies to each other's proposals, along with an extension of the deadline date for the panel to render a decision. Thus, **(13)** on July 11, 2002, a third amended post-hearing scheduling order was entered upon the joint request of both parties, extending all remaining timelines, with the parties' replies due on or before July 25, 2003; and with the panel's decision to be rendered on or before September 22, 2003. On July 25, 2003, Petitioners requested an extension to file their replies to Respondent's proposals, as well as an extension for the panel to render its decision. Respondent stated no opposition to Petitioners' request to extend the timelines. Accordingly, **(14)** on July 25, 2003, a fourth amended post-hearing scheduling order was entered upon request of Petitioners, extending the date for each party to file their replies to July 30, 2003; with the panel's decision to be rendered on or before October 30, 2003. No further requests for extension were made by either party.

II. Issue

Petitioners' February 4, 2003 amended due process hearing request alleged the following:

> Failure to provide a free appropriate public education (FAPE) in the least restrictive environment – requiring placement at The Churchill School and Metropolitan School. Efforts to re-enroll in Kirkwood School District and Special School District lead to unsatisfactory placement (Project Achieve & Epworth Day Program) once again a failure to provide FAPE. Student placed at The Pathway School, subsequent F.L. Chamberlain.
>
> Plaintiff requests tuition reimbursement for The Churchill School and Metropolitan and transportation to and from said schools and tuition reimbursement for The Pathway School (Norristown, PA) and F.L. Chamberlain Center Inc. (Middleboro, MA) and transportation costs to and from said schools.

The matter proceeded to hearing on this issue.

III. Findings of Fact

At the commencement of the hearing, the parties agreed to the admission into evidence of Petitioners' Exhibits Numbers 1 through 253; Respondent's Exhibits Numbers 1 through 84, and 92; and joint exhibits A and B. Subsequently, Petitioners' Exhibit Number 254 (photo of student) was admitted into evidence. Witness testimony by deposition was admitted into evidence, denominated Panel Exhibits Numbers 1, 2, and 3. Subsequently, additional witness testimony by deposition was admitted into evidence, denominated Panel Exhibits 4 and 5. Subsequently, Petitioners offered another document, a "student service plan" from F.L. Chamberlain School, that was erroneously marked as Petitioners' Exhibit Number 254 (duplicate exhibit number). This document was not disclosed to Respondent five days prior to the hearing, but Respondent waived the five-day disclosure rule for this document. Respondent objected to the document's admission on grounds that were unrelated to the admissibility of the document, and the panel admitted Petitioners' (second) Exhibit Number 254.

The panel received into evidence and gave appropriate weight to the following witnesses:

Petitioners' Witnesses: Petitioners[1]; Jane Dieters; Dr. Roland J. Werner; Julie Roscoe; Lawrence Mutty; Rita Buckley; Ellen Harms; Dr. Richard Todd (deposition read into evidence); Dr. Paul Simons (deposition read into evidence); Gayle Hennessey (deposition read into evidence); Emily Killar (deposition read into evidence); Joann Nivens (deposition read into evidence)

Respondent's Witnesses: Nancy McCormac; the student's mother; Jane Hudson; James Fox; Lee Andrews; Prudence Taylor

[1] MDESE requests that personally identifiable information concerning the student be set forth only on the cover page of the panel's decision. Both the student's parents testified in the hearing.

At the conclusion of Petitioners' evidence, Respondent moved for a directed verdict. This motion was overruled.

After a careful and thorough review of all the evidence, which was substantial, as well as consideration of the proposed findings submitted by each party, the panel hereby finds the following facts:

1. The student was born. At the time of the hearing, he attended 9th grade at the F.L. Chamberlain School, a private residential school in Massachusetts.
2. The student's permanent residence is with his parents, who live in the Kirkwood School District in St. Louis County.
3. It is undisputed that the child has a "disability" defined by the Individuals with Disabilities Education Act ("IDEA"). The parties agree that the child suffers from numerous disabling conditions of a psychological nature, described by Respondent as "complex and variable," and described by Petitioners as "severe." The panel finds both descriptions to be accurate.
4. Throughout the years, the student has been given a number of medical diagnoses, including Pervasive Development Delay (PPD); Oppositional Defiant Disorder (ODD); Obsessive Compulsive Disorder (OCD); and Attention Deficit/Hyperactivity Disorder (ADHD).
5. Education diagnoses have included language impaired in the area of pragmatics; learning disabled in written expression; autism due to Pervasive Development Delay[2]; and other heath impaired due to ADHD.
6. As the child's mother described, his educational function is "tremendously affected" by his behavior problems. His impulsivity distracts him, and he is disruptive to others in class.
7. At the time of the hearing, the child was taking the following prescription medications: Adderall SR for ADHD for long-range focus and alertness; Clonidine for impulsivity; Seroquel for moods and to level his emotional state; Risperdal to maintain an "even keel"; Cogentin to counter-act his akathisia "probably induced by the other medications"; and Zoloft, an antidepressant. Various combinations of these and other medications have been tried over time to arrive at an appropriate regimen for the child.
8. In 1991, during the child's preschool years, he was evaluated at the Central Institute for the Deaf. The child's receptive and expressive language skills were below age expectation. His nonverbal intelligence was within the average range. Placement in a language development class was recommended.
9. When the child was first referred to the Special School District, a "Developmental Screening Report Form" noted concerns with behavior, and fine motor skills. The report referenced the parents' concerns with "processing." The report noted that in

[2] Some evidence refers to the student's autism as "educational autism."

group settings, the child was unable to stay on task, sought attention, and became disruptive and aggressive with peers.

10. A July 10, 1992 Early Childhood Special Education evaluation reported that the student had a cognitive level in the low average range with some average scores in several areas. There were concerns with behavior. A "moderate delay" in fine motor skills was reported. The child was found to have "significant delays in the area of written language." The student was deemed eligible for Early Childhood Special Education [ECSE] due to "significant delays" in behavior, cognition and fine motor skills.
11. The student's first Individualized Education Program [IEP] was completed on August 4, 1992. It assigned 690 of 870 minutes per week for ECSE and 30 minutes per week of occupational therapy. The IEP referenced the child's ADHD.
12. On May 13, 1993, a reevaluation was completed for the student, who was then attending the SSD ECSE program for one-half day and the Kirkwood Early Childhood Center for the other half of the day (in the mornings).
13. The May 1993 reevaluation included a Wechsler Preschool and Primary Intelligence Scale score of 100 – average. The Woodcock Johnson Scales of Independent Behavior rated the student in the "moderately serious" range on the "General Maladaptive Index."
14. The reevaluation concluded that the student had "Other Health Impairment" and language impairment in syntax, semantics, and pragmatics. The language impairment was found to impact the child's ability to follow directions, respond appropriately to questions, engage in verbal sequencing and description, and maintain topics in conversation. It was recommended that the child "would benefit from a structured behavior management program incorporating clearly stated, consistent limits and predictable consequences. It was also recommended that the student "should be provided with feedback (non-verbals, reflection, restatement) to increase ability to be precise in verbalizations."
15. On June 3, 1993, a new IEP was completed for the student, scheduling services for the student as he entered kindergarten. This IEP directed 780 minutes per week of regular education, 60 minutes per week of speech and language services, and 60 minutes per week of resource room attendance for OHI.
16. In the fall of 1993, the child began kindergarten at Tillman Elementary School.
17. On October 26, 1993, the student's IEP was amended, increasing his special education services to 225 minutes per week.
18. On April 7, 1994, the student was evaluated by Speech-Language Services, Inc., which concluded that he had a "semantic/pragmatic language disorder." The evaluation recommended that the student continue language therapy through school. It also recommended that the child begin private therapy to "compliment the goals and objections currently in place at school." Also, "Direct intervention in the area of pragmatics and social language is recommended."

19. The student began first grade at North Glendale Elementary School in the fall of 1994.
20. A new IEP was developed for the child on October 20, 1994. This IEP designated 1680 minutes per week of general education, 60 minutes per week of speech and language services, and 60 minutes per week of resource services.
21. On January 30, 1995, an IEP review resulted in an additional 30 minutes for speech and language services.
22. After the student began second grade, on October 30, 1995, a new IEP designated 1680 minutes of general education, 60 minutes of "class-within-a-class" services, 90 minutes of speech & language services, and 30 minutes for "other health impaired" services.
23. As the student was finishing second grade, on April 29, 1996 Respondent school district completed a reevaluation, resulting in a diagnosis of language and speech impairment in the areas of pragmatics and articulation.
24. Concomitant with the reevaluation, the student's IEP was amended, confirming a diagnosis of "Learning Disabled, Language/Speech Impaired."
25. As the child progressed from kindergarten through elementary school, his parents remained actively involved in his education, trying to keep him on task, working with him at home, and integrating his education into other parts of his life.
26. The student's mother testified that his teachers "have always loved him" and were always there for him. But while they were enthusiastic, by the end of the year "they were exhausted." In her opinion, the student's teachers were very frustrated that they "weren't able to make this difference in how he learned."
27. As the student began third grade, he had problems with recess and the lunch room, as he could not relate to other children. As his mother described, "Everything would fall apart." For recess and lunch, it was agreed that the student would return to his second grade classroom to act as a "teacher's aid" so he could avoid other classmates.
28. In fourth grade, the child's mother felt that he was being "dumbed-down." She testified that although he felt Respondent school district was trying, "just nobody could quite ever get a fix on him."
29. The child's fourth grade teacher, Nancy McCormac, testified that the child exhibited some behavior problems that year. She stated that most of these problems were handled pursuant to the student's behavioral plan.
30. After the child completed fourth grade, his parents decided to try private schooling. His mother explained their decision:

> Well, he just wasn't going to make it in fifth grade in public school, there's no way that the resource teacher had the time to offer [the student] what he was going to need.
>
> She would have two or three other kids down there in her room when [the student] would go in.

> Now, she did what she could, she was a wonderful person.
>
> You know, I felt that she gave everything she could give to him, and there was no way that that was working and [the student] was falling farther and farther behind.
>
> As I said, his writing skills, he didn't do punctuation, he didn't use capitalization, his content was bizarre at best.
>
> He didn't do paragraph structure, he was woefully behind.

31. For fifth grade, the student's parents planned for him to attend The Churchill School, a private school for the learning disabled in St. Louis County. Although Churchill did not have an opening for the fall semester, the student attended Churchill's summer program in 1998.
32. During that summer, a fall semester vacancy opened at Churchill and the student enrolled there for the fifth grade.
33. The student's mother reported that he did well at Churchill during fifth grade. The child was in a tutorial program during that academic year.
34. Based on the student's success at Churchill during the fifth grade, he was placed in Churchill's transition program for the sixth grade. It was envisioned that this transitioning would lead him back into the regular classroom for middle school.
35. The student's sixth grade transitioning program was problematic, as his behavior deteriorated. His academic progress was nominal, and his interactions with peers were difficult.
36. The child's mother attributed his problems in sixth grade to the transitional nature of the program – different from the tutorial instruction he had received throughout fifth grade.
37. At the end of the student's sixth grade year, Churchill personnel recommended he continue in their transitional program. However, the parents decided to find a different school.
38. The child enrolled at another private school, Metropolitan School, for his seventh grade year. The parents had been interested in Metropolitan's positive behavior reinforcement program, as the child had previously done well with rewarding token systems such as those used at Metropolitan.
39. During the child's seventh grade, his mother described his behavior as "up and down."
40. Metropolitan School did not have one-on-one instruction services available for the child. Nor did the school offer language services, or a therapeutic program.
41. The student began eighth grade at Metropolitan School, but his behavior continued to be difficult. The school began calling his mother to come pick him up from school each time there was a problem. This was designed to immediately reinforce for the student that his current behavior was not acceptable. The child was often sent home from Metropolitan for negative behavior.

42. As the parents struggled to find a good educational placement for their son, they continued to try different medical and psychological interventions. While attending Metropolitan School, the child's medicines were adjusted frequently.

43. Although the child had been removed from public schools, Respondent continued to provide some services through the "SNAP" [Special Non-Public Access Program]. The student received SNAP services while enrolled at Churchill and during his first year at Metropolitan School; the parents declined SNAP services during the child's first semester of his second year at Metropolitan.

44. In August 2001, the summer after the child's seventh grade and his first year at Metropolitan, mother completed the Judevine intensive parent training program. During her testimony, she indicated that she began to believe her son would require an intensive program integrated between school and home.

45. During this time, the mother contacted Jodie Hay, with SSD. Ms. Hay suggested that Respondent reevaluate the student. This reevaluation was completed in February 2002.

46. The child completed only the first semester of his 8th grade year at Metropolitan School. He received homebound services from Respondent at times during the 2002 spring semester.

47. The February 2002 reevaluation found the student had "educational autism." The child's mother agreed with this diagnosis.

48. The child's mother testified that the February 2002 reevaluation was the impetus for her and her husband concluding that their son needed residential placement. She testified that she presented the IEP team with a list of ten different schools to consider for placement. She stated that "disappointingly," most of these schools were on the east coast. She testified that she and her husband had contacted about 60 different schools, and found only these ten that were acceptable. She stated that the child's PDD was the main problem.

49. Another IEP was written on February 27, 2002, which actually continued through April 23, 2002. At the February 27 IEP meeting, Petitioners indicated their desire for residential placement "outside of the St. Louis area." SSD area coordinator JoAnn Nivens told Petitioners that an out-of-state residential placement was not possible. The IEP team agreed to reconvene in April "to determine services needed." Pending that April meeting, the IEP directed that the student continue receiving 900 weekly minutes of homebound instruction.

50. On March 1, 2002, the parents, through counsel, filed their original due process request through the Missouri Department of Elementary and Secondary Education. The request claimed: "Failure to provide a free and appropriate public education (FAPE) in the least restrictive environment. The same requires in this matter, a private placement in an out-of-state educational – residential – therapeutic program." In this original request, Petitioners proposed the following resolution: "A private placement in an appropriate out of state educational – residential – therapeutic program. The same is not available in Missouri."

51. Following the completion of the February 2002 reevaluation, the IEP team met several times during the following months. Toward the end of this period, as noted above, the child was scheduled to begin receiving some homebound services.

52. As Respondent was unsuccessful in securing homebound instructors for the student, his mother secured instructors for her son.

53. Most of the student's "homebound" instruction actually occurred at the Kirkwood Library, to which the student would often walk or roller-blade from his home.

54. The child's mother secured a neighbor, Jane Dieters, to provide instruction. Ms. Dieters is a retired mathematics teacher with 25 years experience. She began teaching the student toward the end of April 2002. She met with him twice each week, for about one-and-one-half to two hours.

55. Ms. Dieters testified that the child had good arithmetic skills. She testified that his conduct was good, and that he was respectful. She said he did not question her authority and that they had a good student-teacher relationship. She explained that the student required a lot of one-on-one instruction, and that he "could get lost easily in a classroom." She testified that the child is impulsive, and she "felt like I had to be right on top of him" and establish that she, and not the child, was the authority.

56. Ms. Dieters testified that she had trouble obtaining textbooks from Respondent.

57. Ms. Dieters testified that she was given "total latitude" by Respondent to run the homebound program as she saw fit.

58. Ms. Dieters testified that Respondent never asker her for any kind of progress report either during or after the instruction was complete. She never submitted her own report to Respondent.

59. Ms. Dieters taught the child through the end of June 2002.

60. Another homebound instructor, Ellen Harms, was also obtained by the child's mother. She taught general science. Like Ms. Dieters, she also testified that she received no homebound materials or books from Respondent SSD. She used her own textbook for the child.

61. Ms. Harms testified that she gave "superficial periodic updates" to Respondent's employee Joanne Nivens, an area coordinator, but never submitted written or detailed progress reports. She testified that she was informed that the child's homebound instruction had been delinquent, and that as a result Respondent approved homebound beyond the current school year.

62. Ms. Harms testified that the child could interact with her very easily, and that he was respectful with adults. She stated that when other school children would come to the library after their school let out, she noted the student would "kind of bristle." She testified that his relationship with adults was "quite different" that his relationship with his peers.

63. When the IEP team reconvened in April 2002, JoAnn Nivens indicated that she had previously erred, and that the IEP team did indeed have the authority to recommend residential placement.

64. Following the IEP team meeting in April, another IEP was written on May 23, 2002. This IEP designated 840 weekly minutes in special education services at Project Achieve, and 750 weekly minutes in special education services at a private residential facility (Epworth center). The IEP also designated 120 minutes of psychological counseling, 30 minutes of indirect social work, and 90 minutes of language therapy.

65. Following the completion of the above IEP on May 23, 2002, Respondent mailed a formal "Notice of Action" to Petitioners, advising them of the placement change designated in the IEP.

66. The child's father testified that he and his wife did not negotiate with Respondent regarding the placement at Project Achieve and Epworth. Respondent's attorney made arrangements for the parents to visit these settings, but when they did so, they felt the administrator was unprepared and knew nothing about the child's particular needs. A visit to an actual classroom increased the parents' fears that this placement was not appropriate for their child: the academic component was far inferior to the child's current level, and it appeared the programs had not been individually designed to address the child's behavior problems.

67. In May 2002, the parents informed Respondent that they were sending their child to another private institution, Pathways School in Pennsylvania, for a 90-day evaluation. The parents had previously hired counsel, and this placement decision was conveyed through counsel.

68. The student resided at Pathways School from July 2002 to November 2002.

69. Emily Killar, a clinical neuropsychologist and school psychologist at Pathways, testified by deposition that the school's evaluation concluded that Pathways was not the proper fit for the child.

70. Ms. Killar testified that the child needs a residential program. She testified that the advantage of a residential setting would be the presence of a consistent response to behaviors and an opportunity to teach alternative skills.

71. The child began attending F.L. Chamberlain in Middleborough, Massachusetts during the first week in December 2002. He remained there at the time of the hearing in this cause, enrolled in the 9th grade.

72. The child's mother described Chamberlain as a small town on private property. The children reside in historical homes, in a quiet, simplistic and pretty setting. Tuition at Chamberlain is $100,000 per year.

73. Chamberlain is not approved by the Missouri Department of Elementary and Secondary Education as a special education provider. Nor has the school applied to become an approved provider.

74. The child' mother testified that she believes he is doing well at Chamberlain. He reported good grades to her, and desired to cut short a telephone conversation so

that he could resume watching a movie with some of his friends – something she has never heard from him before.

75. Lawrence Mutty, admissions director at Chamberlain, testified that it took the child awhile to get used to the school's over-arching behavior management system. Thereafter, the student has shown gradual improvement. He has also developed some peer friendships.

76. Mr. Mutty testified that in his opinion, it was premature to conclude whether the child needs to stay at Chamberlain. He stated that this would be for the IEP team to decide. He testified that based on his knowledge of the child's condition, Chamberlain is a good fit. He stated that Chamberlain is especially proficient at dealing with "complex kids" with a complicated medication history and overlapping disorders or identifiable psychiatric illnesses.

77. Mr. Mutty also testified as to the child's current diagnosis, noting ODD, ADHD, and PDD – with the child being on the "cusp between PDD and Aspergers, in my own personal opinion."

78. Respondent claims its educational program for the child features the following:

    a. One-half day would be spent at Project Achieve, and one-half day at Epworth.

    b. Both settings have therapeutic components. Project Achieve offers consultation with a psychiatrist, a social worker in the classroom, and art and music therapy. Epworth offers individuals, group and family therapy, with four full-time therapists on staff.

    c. Both Project Achieve and Epworth offer one-on-one instruction.

    d. Services from a speech and language psychologist are available.

    e. The placement had the potential for integration with non-disabled students.

    f. Project Achieve uses teacher Prudence Taylor who has "considerable experience" in working with students with Aspergers and emotional disorders.

79. Ms. Taylor had never had a half-day student between Project Achieve and Epworth – the student in this case would have been the first.

IV. Conclusions of Law, Decision and Rationale

1. The student is a child with a "disability" as that term is defined in the *Individuals with Disabilities Education Act* ("IDEA"), 20 U.S.C. § 1400 *et. seq.* 20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.7(a), 300.7(c)(1)(i).

2. The student is entitled to a "free and appropriate public education." 20 U.S.C. § 1412.

3. "The term free appropriate public education means special education and related services that: (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under section 1414(d) of this title." 20 U.S.C. § 1401(8)

4. The hearing panel's jurisdiction is conferred by 20 U.S.C. § 1415(f) and Section 162.961 RSMo. *See also* ***Blackmon v. Springfield R-XII School District*****,** 198 F.3d 648, 654 (8th Cir. 1999); ***Gill v. Columbia 93 School District***, 217 F.3d 1027 1035 (8th Cir. 2000).

5. The student's parents reside in St. Louis County, in the Kirkwood School District. Accordingly, the Special School District of St. Louis County is the proper party-respondent in this cause. Section 162.890 RSMo; *State Plan,* Regulation X.3(D)(5) at 118-19.

6. (a) Petitioners seek reimbursement for tuition and transportation expenses from the summer of 1998 through completion of the child's attendance at Churchill School in the spring of 2000.[3] Petitioners' first expense at Churchill, for 1998 summer school, was incurred on May 7, 1998. The child remained enrolled at Churchill, and his parents continued to pay Churchill on a fairly regular basis through May 2000.

   (b) Petitioners' first expense at Metropolitan School was on July 28, 2000, and his final payment was on December 17, 2001.

7. Respondent claims that Petitioners' request for reimbursement for Churchill and Metropolitan are barred by the statute of limitations set forth in ***Strawn v. Missouri State Board of Education***, 210 F.3d 954 (8th Cir. 2000). That case held that in Missouri, actions under the IDEA are subject to a two-year statute of limitations. The court declined to adopt Missouri's general "catch-all" period of five years, opting instead to find IDEA actions most closely analogous to civil rights claims under the Missouri Human Rights Act and its two-year limitations period. The court reasoned that the longer five-year period would frustrate the IDEA's goal of quick resolution for special education disputes.

8. Petitioners argue generally that Respondent has interpreted ***Strawn*** too broadly, and that other cases have "whittled away" its authority. ***Strawn*** was a 2000 case; but Respondent cited a case from 1993, *Florence County School District Four v. Carter*, 510 U.S. 7 (1993), which is not on-point, and *Mary Y v. St. Mary's Area School District*, 967 F.Supp. 852 (W.D. Pa. 1997), a federal district court decision from Pennsylvania.

[3] There is no real dispute between the parties regarding the general periods during which the child attended The Churchill School. As to the specific expenses incurred on various dates for this attendance, copies of invoices attached to Petitioners' recapitulation of requested reimbursement appear to confirm specific dates and expenses associated with private placements. A recapitulation (without documentation) was attached as "Exhibit A" to Petitioners' proposed findings of fact, conclusions of law, and decision. A similar recapitulation with supporting documentation (invoices and statements) was placed in the inside cover of an evidence book. This recapitulation and the supporting documents were never offered into evidence, however. Because all other documents were eventually received into evidence – a voluminous collection nearly twenty inches thick not including transcripts of depositions – and because other references in admitted documents support the veracity of the dates of these expenses, as no party appears to dispute these dates, the panel on its own motion has received these items into evidence for purposes of examining dates certain expenses were actually incurred.

9. Petitioners claim that "It is absurd to expect parents who have ongoing difficulties with the School District to force them to bring an action within two years, rather than to attempt, as the Petitioners did in this case, to resolve and ameliorate disputes that could have arisen had the Petitioners filed a Due Process Proceeding at the time that [the student] attended Churchill." *Petitioners' Response to Respondent's Motion to Dismiss*, p. 4. The dissent in ***Strawn*** agreed with Petitioners, arguing that Missouri's "catch-all" five year limitations period should apply:

> The IDEA mandates that all disabled children have the opportunity to receive a free appropriate public education, and that the child's rights and those of his/her parents are protected. *See* 20 U.S.C. § 1400(d)(1) (1999). Further, the statute encourages parents and school officials to resolve disputes over the disabled child's education, so that the child is not needlessly deprived of the education mandated by law. *See Murphy v. Timberlane Reg'l Sch. Dist.,* 22 F.3d 1186, 1193-94 (1st Cir. 1994). Both of these policies are frustrated by a two-year limitations period.
>
> First, the two-year statute of limitations discourages parents from working with school officials to resolve their differences. Parents in these cases are required to interact with school officials. A school committee drafts an Individual Education Plan (IEP) for their child describing how the child's educational needs will be met during the academic year. If the parents disagree with the IEP, they voice concerns and try to reconcile their differences with school officials. Because a two-year limitations period forecloses the option of compensatory education for any lengthier period, parents will be discouraged from working with school officials to determine the best method of education for their child. Instead of encouraging discourse, the limitations period will require parents to maintain an adversarial posture with school officials and to institute litigation before all efforts to negotiate the matter have been completed. ***Strawn***, 210 F.3d at 959.

The panel notes that nothing prevents the parties from continuing negotiation even after an IDEA due process claim has been filed and is pending before an administrative review panel. The panel fully understands and appreciates the Petitioners' actions in their on-going effort with Respondent to properly educate their child and Respondent's student. The panel concludes that ***Strawn*** is on-point, however, and is controlling authority in this case.

10. Petitioners' amended due process request was filed February 4, 2003. Respondent argues that ***Strawn*** bars reimbursement for any expenses incurred or paid prior to February 4, 2001. This would bar all of the expenses incurred at Churchill, and perhaps a portion incurred at Metropolitan.

11. However, Petitioners' original due process request was filed on March 1, 2002. Under the "relation back doctrine" applicable to civil pleadings in Missouri, Petitioners' amended request "relates back" to the time period included in the original request.

"When an amended pleading arises 'out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading,' the amended pleading relates back." ***Koerper & Co., Inc. v. Unitel Intern, Inc.*** 739 S.W.2d 705, 706 (Mo. 1987). *See also* Missouri Court Rule 55.33(c); FRCP 15(c). Thus, Petitioners are not time-barred from seeking expenses incurred from and after March 1, 2000.

12. It appears a portion of Petitioners' payment to The Churchill School prior to March 1, 2000, covered attendance subsequent to March 1, 2000. Thus, the portion of these expenses attributable to placement subsequent to March 1, 2000 would not be disqualified from reimbursement by the statute of limitations.

13. This leads to consideration of the "continuing violation" exception to a statute of limitations bar. The district court in ***VanDenBerg v. Appleton Area School District***, 252 F.Supp.2d 786 (E.D.Wis. 2003) discussed this exception, noting the dearth of authority for it in IDEA cases, and ruling it inapplicable in Wisconsin. In support of its ruling, the court noted that Wisconsin had a specific one-year statute of limitations for IDEA cases. The court also noted that a "continuing violation" exception might eviscerate the limitations period entirely, as a party could argue that an entire educational history could be termed a "continuing violation." In the present case, however, the child attended Churchill during periods of time not barred by the statute. If Petitioners met the other requirements for reimbursement during that period, the panel would find it appropriate to order reimbursement for that period, even if paid in advance, or if payment for a placement outside the limits also included payment for placement within the limits, such as payment for an entire semester, only a portion of which was within the limitations period – provided the cost of such placement was not separable.

14. Respondent has advanced its statute of limitations affirmative defense both in a motion to dismiss, as well as in its proposed findings and conclusions. The panel ordered the motion to dismiss taken with the case. Herein, the panel concludes that the motion is well-placed for Petitioners' reimbursement claims for any expenses incurred prior to March 1, 2000, and the motion is sustained for those expenses. The motion is denied for Petitioners' reimbursement claims for any expenses incurred on or subsequent to March 1, 2000, or for educational services provided subsequent to March 1, 2000, that were paid at any time, for example, at the beginning of a semester that is not separable. *See* Paragraph 13, above.

15. Respondent claims additionally that when the parents withdrew their child from public school in favor of private placement in 1998, they would be entitled to reimbursement only if Respondent had failed to provide FAPE at the time of the unilateral withdrawal from public school. ***Fort Zumwalt School District v. Clynes***, 119 F.3d 607 (8th Cir. 1997). The panel agrees with this conclusion. Respondent additionally argues that because the unilateral withdrawal occurred outside the two-year statute of limitations, Petitioners are entitled to *no* reimbursement for private placements at Churchill or Metropolitan. It is not necessary in this case for the panel to decide whether the rule from *Fort Zumwalt* can be extended, as Respondent proposes, to bootstrap a limitations defense that would cut off all relief for denial of FAPE, even relief remedying a past denial with current consequences for the student within the period of limitations. Respondent claims ***Schoenfeld v. Parkway School***

District, 138 F.3d 379 (8th Cir. 1998) supports its limitations defense, but the panel reads ***Schoenfeld*** simply as a restatement of the rule from previous cases, including *Fort Zumwalt*, and back to ***School Committee of the Town of Burlington v. Department of Education,*** 471 U.S. 359, 372-74, 105 S.Ct. 1996, 2004-05, 85 L.Ed.2d 385 (1985).

> When a student has special educational needs due to a disability, an individual education plan (IEP) must be developed through the cooperation of school officials and parents to meet those needs and revised as the child's needs change. 20 U.S.C. §§ 1401(a)(20), 1414(a)(5). The plan may include special procedures and programs in the current school or placement in another school. 20 U.S.C. § 1401(18); *Andrews v. Ledbetter*, 880 F.2d 1287, 1288 (11th Cir.1989). Under IDEA strong preference is given to public school mainstreaming. *Florence County School District Four v. Carter*, 510 U.S. 7, 10-12, 114 S.Ct. 361, 364, 126 L.Ed.2d 284 (1993). The cost of private education is borne by the state when a child is placed in a private institution through a decision involving school officials, 20 U.S.C. 1413(a)(4)(B)(i), but parents who unilaterally place a child in private school do so at their own financial risk, *School Committee of the Town of Burlington v. Department of Education*, 471 U.S. 359, 372-74, 105 S.Ct. 1996, 2004-05, 85 L.Ed.2d 385 (1985); *Fort Zumwalt School District v. Clynes,* 119 F.3d 607, 611-612 (8th Cir.1997). ***Schoenfeld***, *supra*, 138 F.3d at 381.

16. Was Respondent providing the student a "free and appropriate public education" at the time his parents withdrew him from the public school? The panel believes FAPE was being provided.

17. The panel is faced with the proper standard to apply in determining whether FAPE was provided. Prior to the Missouri Court of Appeals decision in ***Lagares v. Camdenton R-III School District***, 68 S.W.3d 518 (Mo.App.W.D. 2002), this standard seemed fairly clear, having been set down in ***Board of Education of Hendrick Hudson Central School District v. Rowley***, 102 S.Ct. 3034 (1982), the first Supreme Court case to construe the IDEA, and refined throughout a fairly healthy collection of federal appellate cases. *See e.g.* ***Doe v. Board of Education of Tullahoma City Schools***, 9 F.3d 455, 459-60 (6th Cir. 1993), ["The Act requires that the … schools provide the educational equivalent of a serviceable Chevrolet to every handicapped student. … [W]e hold that the Board is not required to provide a Cadillac."]

18. But in ***Lagares v. Camdenton R-III School District***, 68 S.W.3d 518 (Mo.App.W.D. 2002), the Missouri Court of Appeals held that Section 162.670 RSMo set a higher standard for Missouri special educators than the IDEA. The court held that Sections 162.670 and 162.675 required a student's capabilities be "maximized." Section 162.670 provided the following:

> **Section 162.670.** In order to fully implement section 1(a) of article IX, constitution of Missouri, 1945, providing for the establishment and maintenance of free public schools for gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law, it is hereby declared the policy of the state of Missouri to provide or to require public schools to

> provide to all handicapped and severely handicapped children within the ages prescribed herein, as an integral part of Missouri's system of gratuitous education, special educational services sufficient to meet the needs and *maximize the capabilities of handicapped and severely handicapped children*. The need of such children for early recognition, diagnosis and intensive educational services leading to more successful participation in home, employment and community life is recognized. The timely implementation of this policy is declared to be an integral part of the policy of this state. [emphasis added]

Following ***Lagares***, the General Assembly amended the statute by removing the "maximization" language. The current version, effective August 28, 2002, states the following:

> **Section 162.670.** In order to fully implement section 1(a) of article IX, constitution of Missouri, 1945, providing for the establishment and maintenance of free public schools for gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law, it is hereby declared the policy of the State of Missouri to provide or to require public schools to provide to all handicapped and severely handicapped children within the ages prescribed herein, as an integral part of Missouri's system of gratuitous education, a free appropriate education consistent with the provisions set forth in state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 et seq. and any amendments thereto. The need of such children for early recognition, diagnosis and intensive educational services leading to more successful participation in home, employment and community life is recognized. The timely implementation of this policy is declared to be an integral part of the policy of this state.

Thus, when Petitioners filed the original due process request on March 1, 2002, ***Lagares*** was controlling authority.[4] However, the amendment to Section 162.670 became effective August 28, 2002, prior to Petitioners' amended due process request on February 4, 2003. The panel believes the legislature's present intent, that established IDEA precedent be the Missouri standard, should be applied in this case. ***Reese v. Board of Education of Bismarck R-V School District***, 225 F.Supp.2d 1149, 1155, n.12 (E.D. Mo. 2002). *Cf.* ***Vaughan v. Taft Broadcasting Co.***, 708 S.W.2d 656, 660 (Mo. 1986) ["Under article I, section 13 of the Missouri Constitution, no statute retrospective in its operation can be enacted. *Scheidegger v. Greene*, 451 S.W.2d 135 (Mo.1970). This provision does not apply, however, to a statute dealing only with procedure or remedies. *Id.* at 137. 'No person may claim a vested right in any particular mode of procedure for the enforcement or defense of his rights, and where a new statute deals only with procedure it applies to all actions including those pending or filed in the future.' *Id*. Nor does the federal constitution prevent a remedial or procedural provision from being applied retroactively because 'although a vested

[4] The parties did not reside within the Western District Court of Appeals geographic area. On March 27, 2002, the Missouri Department of Elementary and Secondary Education released a statement that it would not require school districts outside the western district to comply with the higher *Lagares* maximization standard. The Department noted, however, that an appeal of a due process hearing panel decision could be lodged in Cole County, which does reside within the western district.

cause of action is property ..., the [plaintiff] has no property, in the constitutional sense, in any particular form of remedy; all that he is guaranteed by the Fourteenth Amendment is the preservation of his substantial right to redress by some effective procedure.' *Gibbes v. Zimmerman*, 290 U.S. 326, 332, 54 S.Ct. 140, 142, 78 L.Ed. 342 (1933)."]

19. As noted, the panel believes that when the parents withdrew their child from the public school placement at North Glendale, Respondent was providing the student with FAPE, under the ***Rowley*** standard and pursuant to Section 162.670 RSMo 2002.

20. The October 16, 1997 IEP was in place for most of the student's fourth grade. It provided for 1650 minutes of general education each week; along with 90 minutes of special education services, learning disabled; and 60 minutes of special education itinerant services, speech & language. The IEP appears tailored to the student's individual needs at that time, and Respondent offered sufficient evidence to demonstrate that it was designed to provide meaningful educational benefit to the child.

21. The student's fourth grade teacher, Nancy McCormac, testified regarding the IEP services actually provided to the student, and the panel believes the student received actual benefit from those services. Other documentary evidence supports this conclusion.

22. The panel acknowledges Petitioners' concerns that the student was not adequately prepared for fifth grade, or that at times it appeared he was being "dumbed-down." However, Petitioners elected not to institute another IEP to specifically address these concerns, but rather unilaterally withdrew the student from public school and placed him at a private facility. As noted above, parents electing this do so at their own risk. Because the panel believes FAPE was being provided when the student was withdrawn, Respondent cannot be liable for any expenses related to the private placements at Churchill or Metropolitan. ***School Committee of the Town of Burlington v. Department of Education,*** 471 U.S. 359, 372-74, 105 S.Ct. 1996, 2004-05, 85 L.Ed.2d 385 (1985), ***Fort Zumwalt School District v. Clynes***, 119 F.3d 607 (8th Cir. 1997), ***Schoenfeld v. Parkway School District***, 138 F.3d 379 (8th Cir. 1998).

23. It follows, then, that Petitioners would be entitled to reimbursement for their expenses at Pathways and Chamberlain only if Respondent denied FAPE subsequent to the child's placement in private schools, during times when he received public services pursuant to the IDEA. The services provided in conjunction with and following the February 2002 reevaluation would form the backdrop against which the issue of whether FAPE was provided would be analyzed.

24. Among other things, the February 2002 reevaluation concluded that the student had "educational autism." The child's mother agreed with this diagnosis. Additionally, she testified that the reevaluation was the impetus for her and her husband concluding that their son "really needed residential placement." The panel concludes that Petitioners were in complete agreement with the February 2002 reevaluation.

25. As the reevaluation was being completed and an IEP was being developed, Respondent attempted to implement an interim homebound teaching program to provide the student with educational services. The panel concludes that Respondent failed to adequately provide appropriate homebound services, by failing to locate teachers or provide appropriate teaching materials, including textbooks, in a timely fashion. The student's mother picked up the slack, securing homebound teachers who provided educational benefit to the child. There was no evidence that Respondent did not fully compensate these teachers, or that Petitioners had to pay them anything, so there appears to be no compensable claim for reimbursement. Nor have Petitioners made any such request.

26. The student's IEP of February 27, 2002, indicates that the parents desired a residential placement "outside of the St. Louis area." Respondent employee JoAnn Nivens at first incorrectly informed the parents that an out-of-state placement could not be considered. The IEP directed that the IEP team would reconvene in April to determine the services needed. A day later, on February 28, 2002, Petitioners mailed their original due process request (received and filed by DESE on March 1, 2002), claiming out-of-state residential placement.

27. The IEP team reconvened in April 2002, and at this time Respondent informed the parents that the IEP team did have the authority to recommend residential placement, if warranted.

28. As the May 23, 2002 IEP meeting was being planned, Petitioners informed Respondent that they had decided to enroll the child in Pathways School, a private facility in Pennsylvania, for a 90-day evaluation. Petitioners thus disagreed with the May 23, 2002 IEP and the placement determination therein.

29. The panel is left to determine, then, if the May 23, 2002 IEP would have provided the student with FAPE under the appropriate standard described above. The panel concludes that it did.

30. Respondent's IEP designated a placement for the student where he would spend about half a day at Kirkwood High School, in a special setting called "Project Achieve," and about half a day at the Epworth Center. Respondent described "Project Achieve" as "a program specifically designed for students who have a difficult time in the regular classroom environment, while permitting the student to progress in the general education curriculum." Project Achieve eliminates large group settings, as there were approximately three students present at any given time during the 2001-02 school year, and five students during the 2002-03 school year. A social worker was on site, and a psychiatrist was available for consultation. The program offers art and music therapy. It offers one-on-one instruction when necessary. Prudence Taylor, a teacher in Project Achieve, has experience with Asperger's students. The Epworth Center has access to a psychiatrist who concentrates much of his practice on working with children with Asperger's Syndrome, and utilizes programming designed to address the unique needs of these children. It offers individual, group, and family therapy. It offers one-on-one instruction.

31. The panel understands the parents' concerns and worries that these programs were not "right" for their child. Certainly, when the parents spoke with Respondent's personnel

implementing those programs, specific plans for the student, beyond the IEP, had not yet been developed, and the parents understandably viewed these special education providers as not being ready for their child. However, by this time, the parents had already concluded that their child needed residential placement at an out-of-state facility. The evidence supports the panel's conclusion that nothing else would have satisfied the parents at this point.

32. As explained above, the panel need not decide whether Respondent's proposed placement was designed to "maximize" the student's capabilities. (Nor would the panel conclude that the placements at Pathways and Chamberlain would "maximize" his capabilities. As Respondent notes, those private placements feature problematic elements that the panel would need to address if it determined FAPE was not provided by Respondent.) At any rate, the panel does believe that Respondent's IEP and proposed placement were designed to afford the student educational benefit, and therefore provide FAPE under the federal and state standards. Additionally, based on the fact that the student did receive educational benefit when previously enrolled in Respondent's schools, the panel believes that Respondent could have actually implemented their program and provided real benefit to the student.

33. The panel acknowledges the Petitioners' concerns that Respondent's educators were having trouble with their child, that certain placements were less successful than hoped for, and that as the child grew older, the urgency to see significant improvement became very great. To be sure, *both* the public schools and the private schools had some successes and some failures with this student. The panel certainly sympathizes with the parents and their child, and while all students deserve the best, both federal and state law require a public school district to provide something that will confer some benefit. The panel believes Respondent met its legal requirement in this case.

34. **Decision:** It is, therefore, the unanimous decision of the panel that Petitioners' request for reimbursement for residential placement, and other claims for relief at this time, are respectfully denied.

* * *

So ordered October 30, 2003. Dan Pingelton, Chairperson; Karen Karns; Richard Goldbaum, Ph.D.

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Karen Karns, Panel Member

_____
Richard Goldbaum, Panel Member

_____
Dan Pingelton, Chairperson

NOTICE OF RIGHT TO APPEAL

The law provides that any party aggrieved by this decision may appeal to a court of proper jurisdiction. An aggrieved party may file an appeal in state court by utilizing a "Petition for Judicial Review," pursuant to Chapter 536 of the Revised Statutes of Missouri. That petition must be filed in a court of proper venue (the county wherein the aggrieved party resides, or Cole County) within 30 days after mailing or delivery of the decision. (This decision was mailed to the parties on October 30, 2003.) An aggrieved party may also file an appeal in federal court by filing a complaint in a district court of the United States, without regard to the amount in controversy.